IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 3772 OF 2007

Shri Kesh Bhan Ramdeo Pandey and others .. Petitioners
v/s.
Indira Nagar Welfare Association and others .. Respondents

Mr. S.S. Kudalkar for the petitioners.
Mr. K.R. Tiwari for the respondent No.1.

CORAM : A.M. KHANWILKAR, J.
DATED : 10TH JULY, 2007

P.C.

Ordinarily going by the order which is impugned in this petition, the petitioners ought to have succeeded for asking. The order is one of rejection of the chamber summons without recording any reason to justify that order. I was under the impression that separate judgment must have been passed and the certified copy produced is of only operative portion of the order. However, the petitioner has filed affidavit stating clearly that no separate reasons or judgment has been recorded in support of the order of rejection of chamber summons No.1357 of 2004.

2. As mentioned earlier, ordinarily, this petition ought to have succeeded by setting aside the impugned order. That is because of the well established position that the reason is the soul of the judgment. No reason has been assigned in the impugned order as to why the chamber summons has been rejected. It would have been a different matter if the trial court was to record the finding that the petitioner-applicant was neither the necessary party nor proper party to be impleaded as party-defendant to the suit. None of this has been considered or for that matter addressed in the order.

3. Be that as it may, the question is whether this court should show any indulgence to the petitioners. The answer is an emphatic “No”. That is because the impugned order is dated 18th June, 2005, as is seen from the certified copy of the Roznama at page 23. Whereas, the present writ petition under Article 227 of the Constitution of India has been instituted on 16th March, 2007.

4. No reason has been mentioned in the petition as to what prevented the petitioners to file this writ petition belatedly. In fact, in para 8, the petitioners assert that there is no delay in filing the writ petition. That stand taken cannot be countenanced. There is no explanation offered as to what impelled the petitioners to file the present petition after lapse of over two years after passing of the impugned order. On count of laches, therefore, the present petition is dismissed.

(A.M. KHANWILKAR, J.)